



CONSULTATION RESPONSE

LAW REFORM COMMISSION CONSULTATION

Victims of Crime Compensation

03.5.2022



Introduction

Dignity4Patients is a patient support and advocacy organisation. We work with people who have suffered sexual abuse or inappropriate sexual behaviour whilst a patient in a medical or therapeutic setting. We support over three hundred victims and survivors.

Our services are designed to help patients understand what happened to them and to provide a safe place to talk and access support, advocacy and information services. This includes support with their journey through civil and criminal processes. We assist those patient victims and survivors and their families on this **healing and justice** pathway.

Sexual abuse in health care settings has long been a taboo and difficult crime to deal with. We believe in the ongoing importance of educating the public, healthcare professionals, the media, politicians and policy and law makers. Our ultimate goal is to create a culture where patient protection from any form of sexual abuse is at the forefront in the delivery of health services. And most importantly that a zero-tolerance response is adhered to.

We are extremely grateful for the Law Reform Commissions in-depth research provided in the consultation document, which throws up so much for consideration. We are also grateful for the suggested questions at the end of each chapter of the full document; the summary document, and most importantly the accessible short survey which we were able to share with all our victims and survivors for further input if they so wished. Given that they are the real experts whose voices need to be heard in this process.

Key Summary Points

1. We have very limited capacity to respond to such a dense document as we are small staff of three full time and one part time and work with 300 plus victims and survivors of sexual abuse. Therefore, Dignity4Patients responses are based on the evidence and expertise we have gathered over the past few decades working with and on behalf of victims and survivors through various criminal and civil processes. Our new CEO is also a human rights expert, and all of our staff are trauma-informed trained. We respond in detail only to the questions we have had experience with from our victim and survivor group or in relation to human rights requirements. Other questions we simply don't have the expertise or didn't have the resources to go into detail on.



2. The Criminal Injuries Compensation Scheme was established in 1974 and revised in 2021 but as referenced by the Law Reform Commission (hereinafter LRC), does not expressly articulate its underlying philosophy.¹
3. From our work with victims and survivors and also from the development of international human rights standards we agree with the LRC statement that there is a move from the traditional view of compensation as an expression of solidarity, to the current understanding of compensation as a right and an integral part of **a victims' healing process**.² That said despite the recent shift from needs to rights and ex-gratia (as a favour) to a right, there has been and remains a very piecemeal approach to dealing with victims' rights.
4. We absolutely agree with the LRC observation that the Criminal Injuries Compensation Scheme and the work of the Tribunal are not well known. Despite there being an obligation under international human rights law provisions that it should be widely known about by the public.³ We do not believe that placing it on a statutory footing in and of itself would increase knowledge and awareness about the compensation scheme. This must be done as part of the package of measures that need to happen around having a full effective investigation, and fair and appropriate compensation scheme. Beyond the development of a statutory scheme or awarding of the compensation itself.

*Note that where page and paragraphs are referenced below they are from the printed version of the Law Reform Commission Consultation Paper, Compensating Victims of Crime, LRC CP 67-2022. NOT the online version which has different pagination (hereinafter LRC Consultation Document).

¹ Page 64 para 3.41 LRC Consultation document, says that the Madgalen Laundry compensation scheme by comparison did set out the aims. However, it is worth noting that this compensation scheme was still very contentious. ***This is something needed to be avoided in any new scheme.***

See <https://www.irishtimes.com/news/social-affairs/religion-and-beliefs/magdalene-survivors-insist-state-not-fulfilling-terms-of-compensation-scheme-1.4288657>

“Mr Justice John Quirke’s Magdalen Commission Report in 2013 “and agreed to ‘in full’ by the government”, was not delivered to them under the 2015 Magdalen Restorative Justice Ex-Gratia scheme.

The judge recommended that the State provide health services to the women equivalent to those provided in the 1990s to people who contracted Hepatitis C from contaminated blood products.

The new report notes how “Magdalene survivors accepted the terms and conditions of the Restorative Justice Scheme and signed away their right to sue the State on the promise of an enhanced health service”.

It adds that “ultimately the benefits offered to them are essentially nothing more than the routine healthcare service offered to State medical-card holders”.

In November 2017 the Ombudsman found that the manner in which the Restorative Justice Scheme was administered by the Department of Justice constituted maladministration within the meaning of the Ombudsman Act.”

² The Guiding Principles of the Scheme, 4 (a), Para, 3.44, p. 65, LRC Consultation document; and also set out the EU Strategy on Victims’ Rights, which identifies the purpose of victim compensation as recognising victims of violent intentional crime and to aid to the healing process at EU Strategy on victims’ rights (2020-2025) at page 17, see FN 33 p. 101 of LRC Consultation Document.

³ Increasing Public Knowledge and aiding accessibility, Para 3.36, p. 62



5. We would also like to highlight a point that the Commission has also commented on - *that successful civil litigation against offenders is relatively rare*⁴ (italics added). This is something that is for the most part unknown to the public. Many people think that if a crime is committed against them they should have a justice pathway, and that pathway should not be difficult. It seems simplistic but in the main most people will never have to engage with a criminal or civil justice process. And because we have Gardai, courts, criminal and civil justice processes that are considered to be working within a democratic society and a separation of powers structure, there is a theoretical assumption that if needed that these processes exist and work. In practice this is often not the case.
6. Also what we have found in Dignity4Patients over the years and again, more recently in aftermath of the Prime Time Investigates programme on abuse by the anaesthetist in Naas General Hospital⁵, is that those who engage with our services do so not only for support, information and advocacy as well as court accompaniment, but also so that (and often for victims and survivors **this** is what is more important) their evidence and pursuit of justice can '**prevent future harm**'⁶ to others as well as themselves. This is a consistent, overriding, and powerful message from our victim and survivor group.
7. Our victims and survivors also want admission of fault and responsibility, acknowledgement of the harm caused and the pursuit of both answers and apologies.⁷ These are often not forthcoming and this is what many victims and survivors find extremely hard to deal with. Even when they get financial compensation they feel that as no one has admitted to knowing or being held responsible, or apologising or acknowledging that somehow the crimes committed against them as children have not been really recognised, that justice has not really been done, or seen to be done. This is where support systems are often needed, at this juncture. This will be discussed further in the submission with regards to a more holistic compensation/reparation/redress approach.

In light of this Dignity4Patients strongly believe that any legislation providing for a reformed Scheme should provide for compensation to be awarded alongside a broader suite of reparative measures, such as counselling, medical and other practical enhanced services, and/or restorative justice measures.⁸

⁴ Para 3.103, p. 87, Consultation Document.

⁵ <https://www.rte.ie/news/investigations-unit/2021/1122/1262519-sexual-abuse-complaints-naas-general-hospital/>

⁶ Para 3.103, p. 87 Consultation Document.

⁷ Para 3.103, p. 87, fn. 92 Consultation Document.

⁸ Answering the questions set out in Para 3.104, p. 87.



8. A final issue that Dignity4Patients feels is very important to address is the following. The Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009) says that cases of historic sexual abuse between 11 June 1968 and 30 April 2002 may also be considered under their scheme if victims and survivors would have failed under previous legislation because they were not made within the required time limit.⁹ The majority of Dignity4Patients victims and survivors were abused as children between 1964 to 1996 in health care settings. It took some of them decades to come forward as adults. Very few have been able to achieve criminal prosecution or civil remedies, many are awaiting a protracted civil process, more cases are still coming forward (5 in the last few months), and there are still further criminal cases being considered by the Director of Public Prosecution.

We advocate for inclusion of a similar provision in any new Scheme, particularly given the demographic of our victim and survivors. Had something like this provision been available to them through their criminal or civil processes some of the protracted pain, suffering, re-traumatisation and secondary victimisation may have been mitigated.

⁹ <https://www.nidirect.gov.uk/publications/ni-criminal-injuries-compensation-amendment-2020-scheme-2009>



DIGNITY4PATIENTS ANSWERS TO SOME OF THE SPECIFIC QUESTIONS ASKED IN THE LONG FORM CONSULTATION DOCUMENT

Chapter 3 Legislating for Victim Compensation

Q 3.1 Do you agree that legislation is necessary to underpin Ireland's criminal injuries compensation process?

9. It could be argued that legislation is necessary to underpin Ireland's criminal injuries compensation process. There has been a shift in both domestic and international law on victims' rights that has been addressed in this consultation research that requires Ireland to provide compensation as part of its legal obligations. And which is also informed by other methods of 'soft law' as outlined in this LRC Consultation document.
10. As noted there is currently an ad hoc approach, but the past number of years has seen rapid advances in addressing a number of issues, such as the O'Malley review¹⁰; the Victims Charter¹¹, and more recently the first meeting of a Victim's Forum in March of this year. Compounding this is the expertise on the Island of Ireland from Northern Ireland and a variety of public inquiry and commission of investigation processes from most notably institutional abuse inquiries.¹²
11. The Compensation Directive also allows Ireland develop legislation for the benefit of victims of crime or any other persons affected by crime, provided that the provisions are compatible with the Directive.¹³
12. We agree that there is a need to formalise non-statutory approaches that are either not known about, too restrictive regarding timelines for reporting the crime and accessing the compensation scheme, and often under resourced with staff that are not specialists for dealing with persons suffering trauma. Particularly in relation to crimes of sexual abuse, these ad hoc approaches and

¹⁰ https://www.justice.ie/en/JELR/Pages/O'Malley_Report

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<https://www.victimscharter.ie/#:~:text=The%20purpose%20of%20the%20Victims,can%20understand%20what%20to%20expect.>

¹² P. 56, LRC Consultation Document see FN 17.

¹³ See page 38 of LRC Consultation document.



the existing scheme as it stands do not go far enough in terms of the reaching its international standards and EU Obligations.¹⁴

13. We acknowledge that a statutory scheme could be more fixed and inflexible. However, what ultimately matters is the 'content' of any process, and that compensation is awarded in highly effective and victim-centred process. As stated in this consultation document, legislation can undoubtedly strengthen rights and make them enforceable, and also increase scrutiny of processes and procedures. This discussion on the need to legislate for victim compensation has long been acknowledged, and there is an appetite by current Minister for Justice to put Ireland's criminal injuries compensation scheme on a statutory footing.¹⁵

Q 3.2 The Commission seeks to identify the **guiding principles** that should be reflected in any legislation, so as to ensure that the provision of state compensation to victims of crime accords with a more modern, trauma responsive approach to the needs of crime victims. Do you agree that the following would be appropriate guiding principles to be included?

14. There are a lot of guiding principles in EU and International Law which can be drawn upon in relation to developing a trauma informed responsive approach to compensating victims of serious crime, many of which have been outlined and discussed in the LRC Consultation Document.¹⁶ Dignity4Patients absolutely support the idea that a full re-evaluation of the State's approach to acknowledging and compensating victims of crime is required.¹⁷ And that guiding principles are important so that the provision of state compensation to victims of crime fits into a trauma-responsive understanding of the needs and rights of victims of serious crimes.¹⁸
15. We note that the LRC Consultation Document clearly states that the EU Compensation Directive, which are considered minimum standards, does not set out to harmonise substantive law regarding

¹⁴ <https://www.lawsociety.ie/gazette/top-stories/2022/violent-crime-victims-are-short-changed-says-lrc#:~:text=In%20a%20just%2Dpublished%20consultation,for%20victims%20of%20violent%20crime>.

¹⁵ Page 53, FN 11, LRC Consultation Document, "Minister McEntee announces reforms to the Criminal Injuries Compensation Scheme" available at <<http://www.justice.ie/en/JELR/Pages/PR21000092>> accessed 29 November 2021

¹⁶ 183 Council of Europe Convention on the Compensation for Victims of Violent Crime; 1985 United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; The Compensation Directive of 2004; Victim Directive of 2012; EU Strategy on Victims' Rights 2020-2025.

¹⁷ Law Reform Commission Consultation, *Compensating Victims of Crime*, para 3.19, p. 55.

¹⁸ *Ibid*, fn. 2.



victim compensation or prescribe process to determining such compensation and allows a wide degree of flexibility for Member States provided that provisions are compatible with the Directive providing they are of a binding nature.¹⁹

16. That said we agree with the Court of Justice of the European Union (CJEU) with regards to their opinion that mere administrative practices, which by their nature may be altered at the whim of the administration, may not be considered as constituting the proper fulfilment of the obligation deriving from that directive.²⁰ As noted in the LRC Consultation the CJEU jurisprudence is also 'significant in its strong emphasis on the need for specificity and clarity in this context' and Dignity4Patients agree that whatever its legal form, any scheme for compensation should be clear and precise in its terms, so that the entitlements of victims are clearly identifiable and enforceable.²¹ It is beyond the scope of our limited staff for our response to go into detail of the requirement of a strict legal obligation. But we would support any scheme that does precisely this. Guiding principles could assist in some way in relation to identifiable and enforceable rights.

17. **Reparation**

There are international standards with regards to reparation that could be taken into consideration from transitional justice models of engagement with victims rights, both from the UN and EU models and contexts.²² We agree that the transitional justice provisions of reparation referred to by the LRC in relation to restitution, compensation, rehabilitation, satisfaction/recognition and guarantees of non-repetition or non-recurrence are excellent reparation principles. The indivisibility of these reparation mechanisms is becoming an increasingly recognised norm. There is also a body of international human rights law experience, judicial cases and transitional justice academics in Ireland, that can contribute to the meaning of these guiding principles in relation to compensation as a right.

We note that compensation is considered one form of reparation in developing international law and guiding principles. *The Strengthening Victims' Rights from Compensation to Reparation* (hereinafter Milquet Report 2019)²³ references inclusion in any compensation scheme to 'compensation in

¹⁹ Page 38 of the LRC Consultation Document & Page 53, para. 3.12.

²⁰ Page 53, para 3.12 of the LRC Consultation Document.

²¹ Page 54, para 3.15 of the LRC Consultation Document.

²² https://eeas.europa.eu/archives/docs/top_stories/pdf/the_eus_policy_framework_on_support_to_transitional_justice.pdf;
<https://www.ictj.org/reparations>

²³ https://ec.europa.eu/info/sites/default/files/strengthening_victims_rights_-_from_compensation_to_reparation_rev.pdf



kind'²⁴ which could include free support as professional reintegration, childcare or specialist practical support. With regards to our victim and survivors' group, most of them were children at the time of their sexual assaults and it isn't possible to establish how their lives would have been prior to the incident and then after the incident. The major principles in the Milquet Report, including a shift from compensation to reparation are something we would support.

18. **Compensation as a Right**

Compensation is a right under the transitional justice guiding principles as referenced above. However, Dignity4Patients note that from the information provided in this consultation document that it is clear there is very little knowledge of the current compensation scheme despite statutory rights being introduced in Ireland.²⁵ We also note that it is stated that the provision of compensation is more costly than participatory rights, such as victims impact statements. However, from our own experience with victims and survivors of sexual abuse any civil or criminal process is costly, and the floor rather than the ceiling is that victims of crimes have a right to redress including compensation. We agree with the commission's consideration that the recognition of compensation as a right should be a guiding principle of legislation that provides for it.²⁶ The Milquet Report also supports this stating that there needs to be a shift from a needs based approach to a rights-based approach, which Dignity4Patients strongly support.

19. **Acknowledgement and solidarity**

With regard to our victims and survivors while many of them have sought or are seeking civil or criminal processes in relation to the sexual abuse they suffered, one of their big asks is for public acknowledgment of what happened to them. They were abused as children in a health care setting when they were seeking medical attention. Given the difficulty in any state acknowledgement and years of campaigning for investigations both civil and criminal this is a key ask.

We agree that a formal statement of the aims and purpose of the compensation would be worthwhile, if the other processes worked to reflect that the process is holistic, offers real and meaningful acknowledgment and is not lip service. A new victims compensation scheme, with a resourced body with bite and expertise, and not another state mechanism that is so bureaucratic

²⁴ *Ibid*, p. 8.

²⁵ Para. 3.48, p. 67.

²⁶ Para. 3.50 p. 68.



that yet again leaves victims and survivors feeling unheard, let down, and that their rights are not met is what is needed.

20. **Minimisation of secondary victimisation**

As mentioned above the process is key to many of the favourable outcomes for victims in any compensation scheme, rightly enshrined as you noted on the Victims' Directive.²⁷ And that there is an obligation on Member States to ensure minimisation of secondary victimisation throughout the legal process, with the preamble and Recital 57 recognising tailored services for those at particular risk, including victims of sexual violence or exploitation, which is Dignity4Patients specific victim and survivor clients.²⁸ Along with being expressly stated in the EU Strategy on Victims Rights which recognises that this can add to the *healing process*.

We also agree that the objective of preventing further avoidable harm should be a guiding principle of legislation.²⁹ However, we also note that secondary victimisation can occur regardless, so any guiding principle should reflect this with an aim of minimising, rather than guaranteeing non-secondary victimisation. The purpose is minimisation of harm but acknowledging that there may be further trauma and harm requires that essential resources are from the start available and put into the supports needed by victims and survivors throughout any new compensation scheme process.

Appropriate training helps to protect victims from secondary victimization and there should be a compensation scheme with the highest level of protection and provision of trauma informed services. Noting that we can never fully mitigate against secondary victimisation.³⁰

We also agree that staff also need to be protected from vicarious trauma and in house supports and services must be available and resourced for staff.

We are very keen to state that counselling services used must be sufficient. Our victims and survivors have had various experiences with state recommended and other types of counselling services. Again there is a need to make sure any compensatory scheme that provides counselling as part of a reparation package absolutely gets this right.

²⁷ Para. 3.52, p.68

²⁸ Para 3.54 pp. 68 & 69.

²⁹ Para 3.56 p. 69

³⁰ Secondary victimisation means victimisation occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim.²³ Council of Europe (CoE) (2006), Recommendation Rec(2006)8 of the Committee of Ministers to member states on assistance to crime victims, available at: <<https://rm.coe.int/16805afa5c>> accessed 5 February 2021



Dignity4Patients agree that having a permanent statutory body may assist in ensuring that any new compensation scheme as a service provider is interpreted and applied in a way that may increase fairness, accountability and predictability, and assist administrators in the Scheme in determining these practical matters in a more victim-responsive way. And that perhaps transparency and legitimacy would increase.

Dignity4Patients also strongly agree that the need for State authorities to not expose victims to secondary traumatisation, emphasised in both the Victims' Directive and the recommendation in the EU Strategy on Victims' Rights, would most effectively be advanced by a unified and holistic approach to victim compensation.³¹ For many of our victims and survivors, having to repeat the criminal sexual acts committed against them, as children, to various bodies, the Garda Síochána and the Office of the Director of Public Prosecutions, legal representatives, us as an NGO, and counsellors, takes its toll.

This may also feed into a broader reparation model, beyond financial compensation but to also reflect the wider needs such as counselling, access to enhanced medical cards, access to education etc.

21. **Are there additional or different guiding principles that should be reflected in legislation in this context?**

Victim participation should also be a key principle. Victims and survivors are key stakeholders as 'rights-holders'. Participation is necessary for positive outcomes in any compensation scheme.

While there is increasing recognition and understanding of the need for services across the legal system to be both trauma-informed and trauma-responsive we agree there is a distinction between victims rights, and 'supports' which are often resource reliant, and not all practical supports are available to victims as of right.

Practical supports such as court accompaniment and counselling are not 'rights', to which there is a legal entitlement in Ireland. However, court accompaniment is something that Dignity4Patients provides as a service and we know that it is a critical part of the *healing and justice journey*.

The Department of Justice on the face of it has committed to providing greater support to victims and survivors for sexual offences, using victim-centered policing and the promotion and awareness

³¹ Page 86 para 3.102 LRC Consultation Document.



of victims' rights, and reviewing this scheme is part of that process.³² Also funding our services for court accompaniment recognises this participatory measure as necessary outworking of the holistic reparation model of a healing and justice pathway in a criminal legal process.

Q 3.3 The Commission considers that a steady and consistent funding model is essential to the effective and efficient functioning of any victim compensation scheme. The Commission seeks consultees' views as to whether some of that funding should come from court fines and the confiscated proceeds of crime and/or sources other than the Exchequer.

22. FUNDING

An action for member states on the EU Strategy on Victims' rights includes ensuring that 'fair and appropriate' compensation for violent intentional crimes...is reflected in the national budgets.³³

Dignity4Patients note that the question of funding is outside the scope of this consultation. We also note the reference to the transfer of assets from the Criminal Assets Bureau and Court Poor Box under the Criminal Justice (Community Sanctions) Bill 2014 with a Statutory Reparation Fund. In theory we agree that this is one approach. However, it is outside the scope of our expertise to take a strong line on where the funding comes from without looking into all avenues in depth.

In the case of our victims and survivors an offender moved assets so they could not be part of any claim. We would like for any new compensation scheme would trigger current legislation or introduce new legislative provisions to allow the State to pursue offenders to recoup some or all of the compensation to victims. We note however that there are provisions in law already that the Commission feels that this is likely to be limited and the cost of implementing such a scheme disproportionate to any financial benefit. This is something that can cause ongoing trauma to victims and survivors, that the perpetrator can move their assets beyond their reach and the states reach, and to date has left them in long protracted drawn-out processes. It is also out of sync with the Victims' Directive which requires Member States to promote, and facilitate offender paid compensation.

³² Page 36 para 2.16, LRC Consultation Document.

³³ Page, 57, footnote 50, para. 3.49, LRC Consultation Document – reference to the EU Strategy on Victims' Rights (2020 – 2025) at page 18.



Q 3.4 The Commission seeks consultees' views on the following: **(D4P Note: The following questions are answered below in general paragraphed narrative as opposed to answering each question individually)**

- (1) Whether the Scheme (including any amended Scheme) should continue to be administered by the Department of Justice; or
- (2) Whether the Scheme should be administered by a body such as the Personal Injuries Assessment Board or the State Claims Agency); or
- (3) Whether a new specialist criminal injuries compensation body is desirable.

Q 3.5 If a new specialist body is desirable, what should its functions be?

Q 3.6 Should it be concerned only with administering financial compensation (including adjudicating on claims for compensation), or should other measures, such as the provision of non-financial supports and services (for example counselling) and/or restorative justice measures, form part of its functions?

Q 3.7 If other measures should form part of its functions:

- (1) What services could or should be provided?
- (2) What professions and skills are required?
- (3) How should the body be structured?
- (4) How might such a body intersect with existing state- and NGO provided victim services?

23. The question here is which agency should have the remit and responsibility of criminal injuries compensation scheme?

At present it is the Department of Justice. We agree with the Commission in that the body that administers the Scheme should be established in legislation; adequately and consistently funded; adequately staffed by permanent core team who are appropriately skilled and regularly trained; operated with administrative efficiency; and trauma responsive and most importantly, widely known about.

Dignity4Patients strongly advocates that this should be the floor not the ceiling. This should be the starting point on which to build. Not where the agency should be aspiring to end up.

24. Dignity4Patients is not wedded to having the Department of Justice as the hosting agency. While we note that there is institutional knowledge and experience of operating the scheme, this does not always lead to constructive change required. Fresh eyes, with expertise, and not connected to civil



service processes might be better. We note the advantages and disadvantages laid out in the LRC Consultation document, and the two Personal Injuries Assessment Board (hereinafter PIAB) and State Claims Agency (hereinafter SCA) schemes, which do not have expertise in trauma, nor meet face to face, with neither organisation have adjudicative functions and only makes recommendations for compensation.

Like the commission we have no strong opinion on whether the PIAB or SCA are involved as part of the body process. However, we again go back to the required competencies of staff, process and it being victim-centred, trauma informed, and participatory as noted throughout this response and above.

25. We do, however, think that if the current and successive governments are committed to a victim's commissioner and a victims' forum, then a new specialist body to administer the scheme may possibly be the best process. This is not to say that there cannot be institutional learning overlap. Or some secondments from the Department of Justice to oversee the setting up of same. There is also learning to be taken from the Victims Commission in the North of Ireland.
26. If a new body is agreed, then we fully support the Commissions consideration of a full redesign of the compensation scheme, the establishment of a new body, appropriately resourced with specialist full-time staff, providing an integrated service for victims. This is something that may serve victims and survivors well if designed well, run properly and appropriately resourced to enable it to provide the services it promises both in law and policy. It cannot be a civil service type body, addressed below in further in point 30. It should have much more of a holistic feel to it. Run properly like many of the successful victims and survivor centres and support NGO's that exist. Very recent research by One in Four³⁴ *The Victims Experience in Focus*³⁵ clearly highlights that many victims and survivors simply find the inexperience and inappropriateness of staff through their justice journey hugely problematic and retraumatizing.
27. Victims need to be satisfied with the process as well as the outcomes and that victims and survivors are adequately informed at all stages of the process. This is what transitional justice and human rights-based approach models have developed over decades. We agree fully that any compensation scheme;

³⁴ <https://www.oneinfour.ie/blog/one-in-four-launches-new-research-on-survivors-experience-of-the-criminal-justice-system#:~:text=%22The%20Victim%20Experience%20in%20Focus,through%20the%20criminal%20justice%20system.>

³⁵ <https://online.fliphtml5.com/vnbij/kqyg/#p=12>



“Should have victims as focus, should be trauma responsive. Routes should be efficient, timely, accessible, transparent, consistent and predicable. Process should be minimally retraumatising.”³⁶

Financial redress is not the only route to recovery and any new compensation scheme should reflect this.

28. Should this service stand alone or operate within a broader, more cohesive suite of measures?

A disjointed approach can lead to gaps and duplication. An Irish Human Rights and Equality Commission 2017 report on gaps on protecting victims of crime highlighted many issues that are relevant to this compensation process.³⁷ The IHREC 2017 report also outlines legislative requirements.³⁸

An Garda Síochána have responsibility for provision of practical information and ongoing liaison with victims where prosecutions are proceeding. Information on various agencies is on DoJ Victims Charter website, but does not provide a centralised hub for services. And still in 2022 we have An Garda Síochána asking for face to face training on domestic violence.³⁹ Once again illustrating that the services that are there already are still very wanting, underfunded or under-resourced in expertise.

29. Is there scope for integrating the services?

Yes and no. Yes in terms of having one focal agency going forward. But D4P and many other agencies have spent decades building up trust with individuals. Due to the nature of the crime of sexual abuse, particularly to children who only seek help as adults, we still have people coming forward because of our trusted expertise, so there is possibly a role for both NGO's and an integrated service working hand in hand.

³⁶ Page 78, para 8.85, LRC Consultation Document.

³⁷ <https://www.ihrec.ie/gaps-protections-victims-crime-highlighted-oireachtas/>

³⁸ <https://www.ihrec.ie/gaps-protections-victims-crime-highlighted-oireachtas/>

³⁹ <https://www.irishtimes.com/news/arid-40848968.html>



We also agree that ‘ancillary services to compensation should be provided to further reparative aim of the compensation process’⁴⁰, as noted above in relation to **healing, acknowledgement and recovery**. However, some of the counselling services we are required to refer our victims and survivors to by our funders have not been satisfactory for our victims and survivors needs. Staff did not have the expertise, or there were inordinate waiting times. Service expertise is critical.

The Law Reform Commission correctly notes that there could end up being a hierarchy of victims if some policy and direction-setting ends up that any new national office seems to represent some victims and not others.⁴¹ However, if the *EU Strategy on Victims’ Rights* informs an overarching victims’ response framework then as stated in the strategy ‘national support and protection measures should be effective for all victims at all times.’⁴²

Dignity4Patients strongly agree that the Commission needs to look at compensation in a broad sense including the provision of services, such as counselling, with a reparative aim in a trauma-responsive way.⁴³

We also agree that a National Victims’ Office should provide both compensation as well as general and/or specialist support services in a coordinated and cohesive way, noting that the proposal is focused on service delivery and provision of information, rather than advocacy and lobbying.

We think, however, that there is a role for Victims Commissioner to be the voice of the victims, and champion the interest of victims of crimes and witnesses.⁴⁴ We are not sure they are mutually exclusive. An independent overseer with statutory powers and accountability mechanisms to victims and survivors is important for victims and survivors. It is not just about optics, it is about oversight with bite.

30. **Functions of a new specialist body**

It is beyond the capacity of the organisation to go into details on the questions asked about the function of any new specialist body with regards to whether it should be a single contact point for provision of information, and assistance to criminal justice processes as well as victim-support services. However, we would state that there is huge expertise in the NGO sector into what works

⁴⁰ Page 79, para. 3.88, LRC Consultation Document.

⁴¹ Page 80, para 3.91, LRC Consultation Document.

⁴² Page 81, para 3.91, fn. 78, LRC Consultation Document, EU Strategy on victims’ rights (2020-2025) at page 8.

⁴³ Page 82, para 3.93, LRC Consultation Document.

⁴⁴ Page 83, para 3.95, LRC Consultation Document.



and does not work with victim and survivors engagement with statutory services, including An Garda Síochána, the criminal justice process, courts, counselling etc., and this should all be gathered through intensive work with NGO's and victims and survivor groups. And NGO's should be resourced to provide this information with their victim and survivor groups.

With regard to corporate structure of such a body, again we strongly reiterate that a civil service type structure which lacks expertise and has no ability to guarantee expert staff, and staff moving in and out of positions because of Civil Service Grade equivalence as opposed to expertise just won't work. Trauma informed expert staff at ALL LEVELS are what is essential.

31. Non-Monetary Support

From our experience financial compensation is one element of the reparation for victims and survivors. However, where a perpetrator shows no remorse despite being convicted and there is no apology or acknowledgment at an official level this has, and continues to have, a big effect on recovery of Dignity4Patients victims and survivors.

The Law Reform Commission acknowledges that compensation alone cannot solely provide for victims' needs in the aftermath of crime. Dignity4Patients agrees with this. Monetary compensation is only one form of redress or reparation, but for many of the victims and survivors the impact of the sexual abuse on them as children has life long effects.

At the time of reporting or going through civil or criminal processes there is often a need for support services, which we agree should be included in the definition of compensation. In our experience it is often after all civil or criminal processes have been completed that victims and survivors **'healing'** journey really begins, because up until that point they have often been in a 'holding pattern', surviving in crises mode. Often it is not until there has been at least one civil or criminal remedy outcome that re- traumatization occurs and critical support is often needed most at this juncture. Access to supports for some victims, for the above reasons, should be life-long or unlimited.

Q 3.8 In addition to administering the compensation scheme, should a specialist body function as a "one-stop-shop" for victims? Should it have responsibility for providing information and assistance to victims going through the criminal justice system?



32. A specialist body with well-resourced and expert staff providing a 'one-stop-shop' may work if done properly. It could also assist hugely in mitigating against secondary victimisation and re-traumatization and would be in line with the Victim's Directive. It would also be beneficial to have a single point of contact or named caseworker for victims of sexual abuse, in particular, to deal with their complex case and reduce multiple applications, claims and retelling of the serious sexual offences committed against them. In the case of the majority of our victims and survivors, as children. Our preferred option would be a one-stop-shop for information and claims but engagement with specialist organisations such as Dignity4Patients for advocacy, support and information. Engagement with proper trauma informed medical and counselling staff etc.
33. Existing NGO's should not continue to support people even through a one-stop-shop, as there is always a need for independent resourced support.

Chapter 4 Awards of Compensation

Q 4.1 Should provision be made for the awarding of damages for pain and suffering (or, in the language of the BV case, damages for "non-material loss") in all claims (not limited to fatal claims)?

34. Yes. We agree that a contextual shift has occurred and that compensation is now a right, and by extension there is a focus shift on the purpose of the compensation awarded and what is actually being compensated, with financial compensation being only one part of the reparation journey.⁴⁵

⁴⁵ Para's 4.24 and 4.25, p.100



35. We also agree that the discretionary ability to decide what is 'fair and appropriate' as set out in the Compensation Directive, should be applied and varied in accordance with the violence suffered.⁴⁶ Again the financial viability of the scheme is important, and this was acknowledged in the *BV* case.
36. We strongly believe provisions of damages should also be for pain and suffering (non-material damage) and that supports a proper rights-based approach to compensation for victims of crime.⁴⁷ Compensation has to actually facilitates recovery and assistance in our experience moves beyond financial damages. Our victims and survivors have long term needs such as life-long counselling and access to medical assistance. More recently we have been asked to look into the possibility of an enhanced medical card as we have seen in the case of the Mother and Baby Home Redress Scheme,⁴⁸ as long term counselling costs and other medical pathways are required.
37. Part of the any new scheme evaluation is the need to assess the purpose of the state-funded compensation schemes for victims and how to fully assist victims in their journey to recovery through a holistic and in some cases lifelong compensation process. Many of our victims and survivors who were sexually abused as children have life changing and lifelong requirements due to the nature of the violent crimes and violations they suffered *as children* and can only deal with in adulthood. Many victims and survivors have psychological injuries and post-traumatic stress disorder that manifest later. This is also in line with the EU Strategy on Victims' Rights 2020-2025 with regards to the ***purpose of victim's compensation*** as recognising victims of violent intentional crime and to add to their ***healing process***.⁴⁹ We are very aware from our victims and survivors that the nexus of justice and healing is extremely important. This should be clearly stated in statute and in guiding principles.

⁴⁶ Para. 4.19, p. 98.

⁴⁷ Rights-based approach has emanated from the human rights world, and extend beyond the EU to international 'soft law' and international development and transitional justice models.

⁴⁸ <https://www.thejournal.ie/mother-and-baby-homes-redress-scheme-ireland-5602943-Nov2021/>
[Human Rights and Equality Commission Report; INTERDEPARTMENTAL GROUP ON RESTORATIVE RECOGNITION FOR FORMER RESIDENTS OF MOTHER AND BABY HOMES file:///C:/Users/Director/Downloads/126283_b5f5a82f-b606-4a70-bd0c-266bae6034c4%20\(4\).pdf](#)

⁴⁹ EU Strategy on victim's' rights (2020-2025), at page 17.



Q 4.2 In what circumstances are emergency and/or interim awards desirable?

How might such awards operate?

Q 4.3 Should provision be made for compensation to be paid by periodical pension or periodical payment order? If so, in what circumstances?

Q 4.4 Do consultees consider that capped awards of compensation would provide a fairer system for a greater number of applicants, promoting consistency and transparency? Alternatively, do capped awards have the potential to operate unfairly?

Q 4.5 Is there a case to be made for a tariff system of compensation, whether generally or (for example) in relation to any compensation payable for pain and suffering? What would be the relative advantages and disadvantages of a tariff system be?

The above questions are addressed below in cross-cutting responses

38. Dignity4Patients feel that there are circumstances in which an interim or emergency award should be paid. One example is where there is a death or where there are children under the age of 18 that reside with a person who is a victim of a serious crime, and whose incapacitation directly affects the children, or partner. Interim awards are often necessary when other claims and issues are being worked out. There is experience of interim awards being made with other types of compensation processes such as the redress process for Residential Institutions in Ireland, although we note that these processes were not without controversy.⁵⁰
39. We do not have any strong opinions on how payments are made, and what level of cap should be reached, and we note that all of this is a very complex area with regards to awards schemes. However, we note that in some cases from our experience it is good to have individual assessment routes, where doctors reports and issues of addiction and capacity are addressed from a victim-centred perspective, with referrals proper support services.

⁵⁰ Residential Institutions Redress Board Application <https://www.rirb.ie/application.asp>; Calls for interim payments were also made by the Independent Panel of Experts to the Historical Institutional Abuse Inquiry in Northern Ireland (HIAI) because of the age profile of some of the applicants, and in fact some died during the process.



40. We agreed with the CJEU findings in *BV* case that fixed rates or tariff schemes of compensation must be capable of being varied and be sufficiently detailed to avoid awards of compensation being manifestly insufficient.⁵¹

Chapter 5 Eligibility and Exclusion

Q 5.1 The terms of the Scheme set out the categories of victim who may apply for compensation: the victim themselves, any dependant of a deceased victim, or a person who has suffered financial loss because of the victim's injuries. Are the existing categories of victim under the Scheme in this jurisdiction sufficient? Should they be further classified, or classified differently? If so, how?

41. Dignity4Patients is also of the opinion the victims of psychological injuries by not physical injuries can receive compensation under the scheme. This is particularly relevant to most of our victims and survivors who were in the main sexually abused when they were boys. Many suffer from life long and life changing psychological injuries that has had and, in many instance, continues to have adverse impacts on their lives.

Q 5.2 European Union law requires fair and appropriate compensation to be paid to victims of violent intentional crime. There is a lack of clarity in the terms of the Scheme on the entitlements of victims without physical injury to receive compensation. Do you agree that psychological injury should be expressly included within the definition of a crime of violence in a statutory reformed scheme?

42. See note 41 above. Yes we fully agree the psychological injury should be expressly included within the definition of a crime of violence in any statutory reform scheme.

⁵¹ Para. 4.20, p. 99.



Q 5.3 The current minimum award threshold is €500. Does that minimum strike a fair balance between maximising Tribunal resources and ensuring victims are appropriately compensated?

(1) If your answer is no, can you suggest a minimum award threshold that would be fair and appropriate?

43. We have no strong opinion on this but 500 euro seems extremely low.

Q 5.4 A standard feature of most criminal injury compensation schemes is that the applicant/victim is required to “provide all reasonable assistance” in the compensation process and also to the police in the investigation of the offence.

(1) Is it fair and appropriate to refuse an award of compensation if an applicant has withdrawn their complaint from the Garda Síochána?

44. No it is not fair and appropriate to refuse an award of compensation if any applicant has withdrawn their complaint from An Garda Síochána. In some cases, it might be difficult for victims and survivors to deal with any authorities depending on what crime happened to them, what the experience dealing with An Garda Síochána was etc. Our victims and survivors have had a wide range of experiences engaging with An Garda Síochána including being told to withdraw their complaint as the perpetrator, who was subsequently imprisoned, was a personal friend of the Guard, or where they were told their crime didn't warrant an investigation, which they ultimately did get in the end.

Q 5.5 No compensation is payable where the Tribunal is satisfied that the victim was responsible for, and contributed to, because of provocation or otherwise, the offence giving rise to their injuries, and the Tribunal may reduce the amount of an award where, in its opinion, the victim has been partially responsible for the offence.

(1) How should reference to an applicant's contribution to their injuries be defined for the purpose of limiting eligibility?

(2) Should intoxication of the victim form part of an assessment of “contribution to their injuries”?



Q 5.6 Compensation can be refused or reduced if the Criminal Injuries Compensation Tribunal considers that the conduct of the victim, or his or her character or way of life make it inappropriate that he or she should be granted an award. The Commission considers that this exclusion, as currently drawn, is overly broad and potentially disproportionate. The references to character and way of life are both vague and subjective. The views of consultees are sought on how to reform this limitation on eligibility:

- (1) What criteria should justify refusal or reduction of an award of compensation for criminal injuries? For example, should a history of criminality justify refusal or reduction, or only criminality of a particular level or seriousness?
- (2) Should a similar limitation be retained but restricted to conduct that is causally linked to the injuries inflicted?
- (3) Should the decision-maker retain discretion to consider an applicant's personal conduct or circumstances in relation to the injuries inflicted but be required to conduct a proportionality assessment in the exercise of this discretion?

45. Both questions above are addressed here. The Irish Council for Civil Liberties developed a Guide for Lawyers to the Victims Directive & the Criminal Justice (Victims of Crime) Act 2017 which addresses some aspects of these questions and victims' rights to compensation under the Directive.⁵²

Specifically with regards to a victim involved in a criminal offence, we agree with their assertion that victim of crime is entitled to the rights set out in the Directive regardless of their involvement in another criminal offence. And their argument that "[T]his is something that is often seen in feuding groups/families, where one day they are a victim of a crime and the next they are an accused, having been involved in a retaliatory attack. Similarly, a convicted person may be a victim of crime in prison and he/she should be entitled to the rights under the Directive."⁵³

46. More specific to our victim and survivor group, this exclusion could lead to a bizarre outcome, for example in relation to a case where a child who has some criminal offences reports sexual abuse in a health care setting by a perpetrator considered an eminent health care provider, doctor, nurse,

⁵² Maria McDonald BL, Guide for Lawyers to the Victims Directive & the Criminal Justice (Victims of Crime) Act 2017, Irish Council for Civil Liberties at <https://www.iccl.ie/wp-content/uploads/2018/11/5871-EU-Victims-Day-Proof-updated-v2.pdf>

⁵³ Page 13, Maria McDonald BL, Guide for Lawyers to the Victims Directive & the Criminal Justice (Victims of Crime) Act 2017, Irish Council for Civil Liberties at <https://www.iccl.ie/wp-content/uploads/2018/11/5871-EU-Victims-Day-Proof-updated-v2.pdf>



care worker. Therefore 'character' becomes an issue in accessing your right and could see you denied access to justice as a minor with criminal convictions. This would be a very unfortunate outcome on accessing 'fair and appropriate' compensation, or a more holistic approach to long term reparation. Particularly in relation to the extremely nefarious crime of child sexual abuse.

Chapter 6 Procedural Issues

Q 6.1 The Commission is committed to assessing the processes of the Tribunal with a view to ensuring not only that they are efficient and fair, but also that they do not re-traumatise victims. The Commission seeks the views of consultees on all aspects of the application process: its format, whether it is generally easy or difficult to complete, and aspects which are not clear or could be improved.

- (1) What information is necessary to complete an application for compensation?
- (2) How can administrative burdens be reduced?

47. Dignity4Patients is not sure what information would be necessary to complete an application, nor how administrative burdens can be reduced, bar having people with expertise in this area.

Q 6.2 Would an online application process reduce administrative obstacles and make the scheme more accessible?

- (1) Would an online application process be suitable for all claims, or only for more minor claims?
- (2) What are the disadvantages of an online system?

48. We are not convinced an online application process would be suitable for all claims as this has so many assumptions about it e.g. educational capacity, ability to read, ability to write, access to the internet. There are also issues around anonymity, who has access to the information, GDPR, hacking, loss of information and so on.

However, there should be a downloadable form that can be typed into and can then be printed or submitted by email to a specific point person, and that person should be someone that can be contacted by the person applying to any new scheme. Not an online application form that goes into a portal. We also note that an appropriate online system could assist in speeding up the process.



Q 6.3 The current Scheme requires applications for compensation to be made within three months of the date the criminal injury is sustained. No applications may be accepted by the Tribunal where the event giving rise to the injury took place more than two years prior to the date of the application.

(1) Are time limits required?

(2) If so, are the existing time limits appropriate?

(3) Are there circumstances in which extensions of time should be permitted? If so, what circumstances?

49. During the time of finalising this submission Dignity4Patients received a phone call from a solicitor representing a client who was sexually abused in a health care setting over 35 years ago. It was this persons **first time talking to anyone ever** about the sexual abuse that he was subjected to as boy. He is now wishing to pursue a justice process. A time limit on compensation for victims of sexual crimes, particularly where the victims were children and the perpetrators were adults simply does not work. In our experience in many, many, cases it is only when the child becomes an adult that they begin to understand that the sexual abuse they were subjected to is in fact a crime. Therefore, there should be no time limit in relation to victims of sexual crime for persons who were abused as children and begin to deal with this crime an adult.

50. One thing that Dignity4Patients feels is very important to note is that the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009) says that cases of historic sexual abuse between 11 June 1968 and 30 April 2002 may also be considered under this scheme if they would have failed under previous legislation because they were not made within the required time limit.⁵⁴ The majority of Dignity4Patients victims and survivors were abused as children between 1964 to 1996 in health care settings. It took some of them decades to come forward as adults. Very few have been able to achieve criminal prosecution, many are awaiting a protracted civil process, more cases are still coming forward (5 in the last few months), and there are still further criminal cases being considered by the Director of Public Prosecution.

We strongly advocate for inclusion of a similar provision in any new Scheme, particularly given the demographic of our victim and survivors. Had something like this been available to them through their criminal processes some of the unnecessary protracted pain, suffering, re-traumatisation and secondary victimization may have been avoided.

⁵⁴ <https://www.nidirect.gov.uk/publications/ni-criminal-injuries-compensation-amendment-2020-scheme-2009>



51. In 2019 research in the UK '*Compensation without Re-Traumatisation*⁵⁵ by the Victims' Commissioner, Baroness Newlove noted that police often advise victims not to apply for the criminal injuries compensation before or during a trial, because defence lawyers could use this against them, implying they are only making allegations in order to claim compensation. She argued that given the increasing delays in cases going to trial, particularly sexual violence cases, victims who delay their applications are likely to be out of time to apply for compensation. Similar issues may arise in Ireland because of the current process of waiting for the conclusion of criminal or civil proceedings to decide on an application for compensation under the Scheme. From our experience Dignity4Patients victims and survivors are just simply out of time also because of what is stated above in point 50.
52. We accept there needs to be a cut-off point, but the evidence suggests the current two-year limit is unfairly disadvantaging a specific group of victims and this needs to be addressed. One way of addressing this issue would be to introduce a two-year limit from the date of reporting the crime or one year from the completion of criminal justice proceedings, whichever is later. And the reporting does not necessarily have to be to An Garda Siochana, but to a solicitor, or to an NGO who assists with the victim or survivor making a statement to a solicitor.⁵⁶
53. The time-limit issue has been specifically dealt in the UK by recent changes to criminal compensation and with changes in the procedures of the UK Criminal Injuries Compensation Authority (CICA).⁵⁷ Put simply when it comes to claiming compensation for 'historic' abuse;
- “...the CICA will pay out if all of the requirements are met. In the case of historic abuse claims, this means that the crime has to be reported to the police. If the crime has been reported when you were a child, you may have to explain why you didn't claim within the “two years” time limit rule set out by CICA. If you have recently reported abuse to the police, you can still make a claim.”⁵⁸

⁵⁵ <https://victimscommissioner.org.uk/document/compensation-without-re-traumatisation-the-victims-commissioners-review-into-criminal-injuries-compensation/>

⁵⁶ See also Paragraph 44 in this document.

⁵⁷ <https://www.gov.uk/guidance/criminal-injuries-compensation-a-guide#full-publication-update-history>

⁵⁸ <https://www.cica-uk.co.uk/historical-abuse-compensation/>



Q 6.4 The Commission would like to hear from consultees on the kinds of supports that would assist applicants in the application process:

- (1) Are additional supports required for particular categories of victim? If so, what supports are required?
- (2) What additional supports are required for applicants with language barriers, physical or intellectual difficulties?
- (3) What additional supports are required for families and loved ones bereaved by homicide in the application process?
- (4) What additional supports are required for victims making cross-border applications from other jurisdictions?

54. We have outlined above in answers to Q.3 category a lot of information on trauma informed, holistic, inclusive, resourced processes required for dealing with victims of sexual crime. We also feel the same applies to anyone with language barriers, physical and intellectual disabilities. These are not optional requirements. Many are covered by other types of legislation and human rights legislation including the United Nations Convention on Right of Persons with Disabilities.

Application forms should be available at a minimum in all languages of the EU. This should not be a costly issue. Terms of scheme should be clear and in accessible format. NGO's should be able to support people through these processes. They are often doing this at a time when they are extremely vulnerable and upset.

In our opinion information regarding the Victims of Crime Compensation Scheme should be part of the An Garda Síochána's standard operating procedures and be provided to victims immediately after the victim had made their garda statements / report.

55. The problem with sending the application within three months of the crime is already addressed in the time limit question above.

Q 6.5 What measures are required to protect victims from secondary victimisation in the compensation process generally?



56. This is addressed in more detail in the Question 3 section above.

Q 6.6 The Commission seeks the views of consultees as to the effects of delay on applicants under the Scheme and possible options to reduce or eliminate delays in the compensation and appeals process.

57. This is also addressed in the question on time-limit above in relation to our specific victim and survivor clients. Quite simply, "*Justice delayed is justice denied*" is a legal maxim, and if redress, reparation or relief to an injured party is available, but is not forthcoming in a timely fashion, it is for many effectively the same as having no remedy at all. Many of our victims and survivors feel this as they have spent decades trying to get any legal remedy. Had they have been able to avail of a process like this, it may have mitigated in their sense of frustration, exhaustion, abandonment by the state, invisibility, lack of acknowledgement and the pain and suffering that they continue to carry to this day. As they still proceed through protracted civil and criminal cases.

Q 6.7 The Commission seeks the views of consultees as to whether applicants require legal advice and/or representation in the compensation process. If it is considered that legal assistance is necessary and desirable, should provision be made for legal aid?

58. Yes, either legal representation or legal advocates via NGO's who have expertise in these processes. We assist victims and survivors through civil and criminal processes including giving statements to An Garda Siochana, as well as Court Accompaniment. We know the value of this to victims and survivors. The tribunal should have the power to award victims' legal costs if legal representation is needed. This is particularly helpful if the system remains the same where the review and decision are desk top/paper based and there is no oral submission to the tribunal. Representation is something that should be considered further.

Q 6.8 Should the Tribunal have discretion to award legal costs to applicants where it considers such an award to be appropriate? What limits, if any, should be imposed on such discretion?

59. Yes. we are not sure of what limits, but there is plenty of legal precedent as to levels of awards of particular crimes which could be referenced. Transparency around decision making is key to any award process. This would have be included in any statutory measures and also in any guidelines.



Q 6.9 The Commission seeks the views of consultees regarding the benefits of creating an external appeal mechanism, to a court or to a body such as the Ombudsman, on a compensation decision.

60. Dignity4Patients absolutely believes this process should be independent to any Tribunal, similar to an Ombudsperson/public advocate system.

Chapter 7 Interaction with Compensation in the Criminal Process

Q 7.1 The Commission is keen to learn of consultees' insights into how frequently orders under section 6 of the Criminal Justice Act 1993 are made at sentencing.

Q 7.2 Do section 6 orders meet the objectives of the Victims' Directive that:

- (1) victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings, and
- (2) Member States shall promote measures to encourage offenders to provide adequate compensation to victims.

Q 7.3 How could such orders be improved, or measures to encourage offenders to provide adequate compensation be strengthened?

Q 7.4 The Commission is keen to determine if the process of court-ordered compensation could be restructured so that it offers protection for accused persons from prejudice, while maintaining the integrity of the sentencing process and providing reparation for victims. The Commission is inclined to the view that the current process of waiting for the conclusion of criminal or civil proceedings to decide on an application for compensation under the Scheme is potentially inefficient. It may also cause financial hardship for victims.

(1) Do you have any views or suggestions on how to better integrate these parallel processes in a clear and efficient manner for victims?

(2) Could the compensation order at the conclusion of the criminal trial operate notionally in favour of the victim, with provision for the order in fact to operate in favour of the state criminal injuries compensation fund, so that the cost of compensation is not unnecessarily borne by the taxpayer?

Q 7.5 The Commission seeks the views of consultees on the possibility of reducing procedural hurdles for victims of crime with ongoing legal proceedings by introducing information sharing from the criminal or civil courts to the Tribunal, such as sharing the book of evidence from a criminal trial, as supporting documents for a victim's compensation application.



61. We do not have expertise or knowledge of the outworking of Section 6 provisions of the Criminal Justice Act 1993. We are aware from this research provided by the LRC that under the EU Directive Ireland must have a system in place where victims can get a decision on compensation from the offender. However, as noted it seems that these two systems are not working as the Irish provisions require victims or survivors to wait until the end of a criminal process, whereas EU and International Law provisions are much broader in scope and require that there is a more immediate available process.

We also know that not many, if any, of our victims and survivors are aware of, or had been made aware of court ordered compensation through section 6 orders. Awareness of this should be mandatory from legal teams, An Garda Síochána, judges and any awarding bodies.

CONCLUSION

62. The EU Strategy on Victims' Rights (2020-2025) states that the overall objective of compensation is identified as recognising victims of violence (international) crime and to add to the *healing process*. We strongly advocate for any new compensation scheme, regardless of whether or not it is placed on a statutory footing, to have a strong set of guiding principles based on a human rights-based victim-centred approach. Placing the rights of victims or crime at the centre of their ***healing and justice journey***. For many of our victims and survivors of sexual abuse this is life-long.